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man-made factors, such as soil nutrient depletion and soil erosion (due to deforestation plus poor and/or overly intensive farming practices); conversion of prime farmland to residential, commercial or industrial use; and crop failures due to man-made global warming.

For now, however, an apparent shortage of food -- across much of the world -- is really a shortage of purchasing power.

Meanwhile, the largely unregulated "global marketplace" for food continues to react to the present situation as a food surplus -- because the marketplace is "a democracy of dollars", where customers without dollars are rendered invisible.

Similarly, back in radio, the sale of speech to the highest bidder has rendered invisible those many groups and individuals who cannot afford "the going rate". In the process, the industry has also rendered invisible the core informational needs of a democratic Republic which requires an open mass media in order to stay a democratic Republic.

#### WHAT IS "EFFICIENCY"?

The NAB has argued that re-legalization of microradio will will undercut "the public interest" by reducing the "efficiency" with which the spectrum is used. The NAB and others evidently equate the good of the public with maximized efficiency, and then equate maximized efficiency with maximized wattage.

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(a) "Efficiency" In Theory. By "efficiency", the NAB and certain other microradio critics appear to mean a maximized broadcast coverage area per unit of energy expended. To put it another way, for them "efficiency" appears to equal maximized potential listenership (presumably leading to maximized advertising revenues) per dollar of capital invested.

It is certainly clear why "the biggest coverage bang for the capital expenditure buck" would be in the interest of large, established broadcasters. What is not clear is why this kind of "efficiency" is in the interest of the public as a whole -- let alone why it is viewed as the core interest of the public, meriting priority ahead of programming diversity, news coverage and a free flow of ideas in a representative democracy.

Societies and their members, both individual and institutional, have many core needs -- and "efficiency", however defined, is only one of them. The most pressing needs of American society, at present, are a revival of innovation and creativity, a restoration of upward mobility, a renewal of corporate and governmental legitimacy -- and, to use Abraham Lincoln's phrase, "a new birth of freedom".

The Communications Act of 1934 clearly recognizes that Commission deliberations must take into account other values beside "efficiency" alone. Section 307(b) directs the FCC to "provide a fair, efficient, and equitable distribution of radio".

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Other provisions of the Act require the Commission to consider still more values, notably including national security.

While it is probably impossible to reach a flawless regulatory balance of all these important and relevant values, the Commission is clearly required to move as far toward this goal as it reasonably can. Certainly, the framers of the statute did not contemplate or intend that all other values should be traded off completely to serve the single value of "efficiency".

The Commission must take equity, and other key values, into account.

Even within the notion of "efficiency", however, there is no need to interpret the term as narrowly as the NAB and its allies have apparently done. A maximized return on capital investment, for individual firms, hardly exhausts the concept.

This does not mean that returns on capital investment should be taken lightly. Capital is what grows an economy, whether it is capitalist or socialist or somewhere in between, and there is only so much capital in any given society at any given time. Therefore, whether an economy is capitalist or socialist or somewhere in between, the society which created the prevailing economic system has a stake in assuring that its finite pool of capital is used effectively rather than wastefully. From the society's perspective, a wasteful capital investment is -- in effect -- an "opportunity cost". It diverts society's

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capital resources from other investments which might have yielded more economic growth (and/or important non-economic benefits, such as cleaner air, increased national security -- or even just fewer ultra-tall, aesthetically objectionable radio towers because more of the new stations are in the micro range).

In short, a good return on capital investment is important for the growth of a society. It does not follow, however, that the people who have the capital are automatically the best judges of what the society needs. In all but the most laissez-faire economic systems, the larger society reserves the right -- or even the duty! -- to "put its thumb on the scale" of certain capital investment decisions. Taxes or regulations, or both, are consciously used to tilt market economics toward investments which offer solid economic and/or non-economic returns to the entire society.

The analysis of microradio critics is centrally flawed by its failure to consider the efficiency of society as a whole.

(b) "Efficiency" In Practice. The practical consequences of such an omission can be illustrated with a "real world" case from an industry that is somewhat comparable to radio broadcasting: the once-regulated, now mostly deregulated commercial aviation industry.

With semi-total deregulation of aviation has come a massive increase in the use of "hub" airports. Airline passengers

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who once flew direct from one city to another are now being required to change planes at a "hub" -- where they usually board a "commuter airline" that has a much higher risk of crashing.

Sometimes, a primary carrier will go to absurd lengths to insure that a passenger's connecting flight will be taken out of a particular "hub" airport where that airline dominates. For example, during the 1980's, those going from Washington to Montreal on one particular flight were first flown west to Saint Louis -- where they had to change planes for a second flight headed north, and east, to Montreal.

"Hub" airports, with their inevitable connecting flights, have been hailed by some as an example of market "efficiency".

The question arises: Efficient for whom??

Presumably, the airlines which have adopted these policies view them as efficient from their perspectives. With disgruntled consumers an inevitable consequence of the increased travel times, this judgment may be in error. (Remember the Year 2000 problem as a demonstration that corporations are not always the best judges of their own best interests.) Nevertheless, the airlines involved likely believe they are now more efficient.

But the picture is incomplete indeed unless one considers the impact on other parties. If individual airlines are more efficient, they have done it by making others less efficient.

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What about the passenger who once flew direct from Washington to Albuquerque in 3 hours -- but now must transfer planes at DFW, with a layover, for a total trip of 8 hours? Even if he or she is on vacation, these "lost" 5 hours have a real value to that passenger -- and their loss can be calculated as a true cost, in economic terms. If the passenger is flying on business, then those 5 hours constitute an economic cost for the employer as well. In short, the airline has not really "increased efficiency": it has, rather, transferred to others certain costs (in this case, the cost of direct service to Albuquerque) that it would not have been allowed to shift in its more tightly regulated past.

Consider as well the impact on communities with airports which are not "hubs" -- or even direct service destinations. While the fares for travel between America's largest cities have fallen or remained stable, fares to destinations like Sioux City or even Des Moines have risen dramatically -- that is, by 50% or more -- for many passengers. Many of the less populated destinations are served by small commuter airlines, with much higher crash rates, if there is any service at all.

It is easy to see why individual airlines wanted to shed small to medium-sized metropolitan areas which did not allow them to spread their flight operation costs over a full load of passengers.

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It is not easy to see how the nation's economy as a whole benefits from this arrangement.

A few dozen favored metropolitan areas have enjoyed lower intercity fares than they might have seen without deregulation. But the price of these stable or declining fares has been much higher fares, and enormously reduced quality of service, for all destinations which fall "outside the charmed circle".

Can a 10% fare reduction between New York and Los Angeles possibly do these cities as much good as the effective shutdown of Stockton or New Haven does harm? Is the national economy boosted more when 15 or 20 cities grow slightly more rapidly, while air transportation connections for another 200 cities are devastated? Or would there be more overall economic growth if the larger metropolitan areas, which are overcrowded already, grew a little more slowly -- while the nation's smaller cities, where many residents of the larger metropolitan areas want to relocate, were able to grow much more rapidly (and thereby help to redistribute America's population more sensibly)?

Some free market economists may object that what I call a "transfer of costs" is really just an end to cross subsidies that were formerly embedded in the industry by government policy.

This is debatable. Even if the airline industry has simply "ended cross subsidies", however, those alleged subsidies were subsidies that promoted upward mobility and net economic growth.

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You know: Like the public libraries.

In any case, the question for both aviation and radio is this:

Whose "efficiency" is enhanced by giving a free hand to acquisitive megacorporations? The efficiency of the society for whose benefit our laws and regulations were supposedly fashioned? The efficiency of the entire industry involved? Or simply the "efficiency" -- which usually means, in practice, the short term convenience and profitability -- of economic elites? Elites who currently show little or no sense of loyalty, accountability or obligation to the communities and countries that have made them rich?

#### CONCLUSION

For the reasons set forth herein, I urge the Commission to consider carefully the information I have provided and adopt the recommendations I have presented.

Respectfully submitted,



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Comments or questions about this document  
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Copies of these Reply Comments are being sent to all parties  
who sent copies of their MM 98-35 Written Comments and/or  
Reply Comments to me, PLUS all parties whose filings in  
RM-9208 have been referenced in these Reply Comments.

Further information about this commenter, in the form of his  
Resume, is attached to these Reply Comments as an Appendix.

# **DON SCHELLHARDT**

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## **PROFILE**

**Focus:** Government Relations, politics, policy analysis & advocacy

Seasoned professional. Top communication skills, top analytical skills, Washington background, law degree. Seek challenge of improving government policies toward business regulation, communications, energy, environment, Pacific Rim trade & defense and/or other vital areas. Came to CT to resolve a family matter and can now relocate.

**WORKED INSIDE ALL 3 BRANCHES OF GOVERNMENT:** Legislative (Counsel to Congressman on Commerce Committee; analyst for House Republican Research Committee) ... Executive (policy advisor at EPA) ... Judicial (CT court administration)

**AN ADVOCATE BEFORE ALL 3 BRANCHES OF GOVERNMENT:** Legislative and Executive (Government Relations executive at American Gas Association) ... Judicial (attorney for low income clients at CT Legal Services)

**A TOP NOTCH COMMUNICATOR AND ANALYST:** Have written/ghostwritten legislative/regulatory testimony, speeches (one for a sitting President), articles, ads & an Overseas Private Investment Corporation Annual Report ... Multi-disciplinary analyses ... Newsletter editing ... Novel (screenplay on way) ... Gave testimony & speeches ... Led policy discussions at gas industry decision-making groups (some "CEOs Only")

**Areas of Special Expertise and/or Interest:** solar PVs, EVs, NGVs, ZPG, CAA, global warming, EPA, FCC, FERC, DSM, IRP, PFLAG, film, TV, radio, publishing, multimedia, space commercialization, energy supply & use, Pacific Rim trade & defense, software & Internet (Windows 95, MS WORD 95, MS WORD 97, WordPerfect)

## **SELECTED ACCOMPLISHMENTS**

Filed Petition For Rulemaking (with 2 others) that triggered FCC consideration of microradio licensing (<100w). Became leader in ongoing Docket RM-9208: advocacy, networking, coalitions, negotiations. Issues debate: FM spectrum, M&A, IBOC, digital, 1934 Communications Act, 1996 Telecommunications Act, 1<sup>st</sup> & 14<sup>th</sup> Amendments.

Negotiated essential provisions, re combined cycle powerplant turbines & coal gas, in compromise legislation to reform Fuel Use Act (FUA) & repeal incremental pricing. (These were the natural gas industry's TOP TWO PRIORITIES at the time.) Compromise became 1<sup>st</sup> energy bill in 15 years to pass Congress unanimously.

Spearheaded gas industry lobbying efforts to promote state mandates for alternative fuels in fleet vehicles. (Backed natural gas, propane, electricity – not methanol) Mandates adopted in TX, LA, OK, AZ & CA. On Advisory Board for related Rulemaking at South Coast Air Quality Management District (SCAQMD) in Los Angeles Basin.

Designed and marketed (with 2 others) EPA's Green Lights program. (Promotes voluntary corporate investments in energy efficiency) Personally recruited Fortune 500 companies, employing cold calls, letters, briefings, Board presentations & win/win negotiations. From 25 companies, Green Lights membership is now several thousand.

## **CAREER HISTORY**

**FREELANCE ASSIGNMENTS**, Waterbury, CT. Contract court administration employee with New Haven Superior Court ... Attorney with CT Legal Services ... Articles, direct mail copy, ghostwriting ... Novel ... Syndicated column for Web sites (1992-Present)

**ENERGY/ENVIRONMENT CONSULTANT**, Alexandria, VA. Affiliated with The Bruce Company (Washington, DC) & The Fleming Group (East Syracuse, NY). Study of gas industry for EPA ... Reports to NARUC: IRP/DSM by gas & electric utilities (1991-92)

**POLICY ADVISOR**, Global (Climate) Change Division, Office of Air and Radiation, U.S. Environmental Protection Agency, Washington, DC. GS-15. Design & marketing of Green Lights energy efficiency program. Sustainable development analysis. (1990-91)

**VARIOUS POSITIONS**, American Gas Association (AGA), Arlington, VA. Special Counsel & Executive Assistant to Vice President, Government Relations (4 yrs); Director of Legislative & Regulatory Affairs (5 yrs); Director of State, Local & Coalition Relations (2 yrs); Counsel for Legislative & Regulatory Affairs (1 yr). Legislative/regulatory analysis & advocacy at state & federal levels. Top industry goals attained. (1978-1990)

**Earlier Positions:** LEGISLATIVE COUNSEL to Rep. Matthew Rinaldo (R-NJ, retired) – advisor on energy, environment, national defense ... PR CONSULTANT, Overseas Private Investment Corporation (OPIC) – articles, releases, Annual Report ... LEGISLATIVE ANALYST, House Republican Research Committee – 100+ Pro/Con papers (energy, environment, defense) for GOP Representatives (1,000 words max)

## **EDUCATION**

J.D., GEORGE WASHINGTON UNIVERSITY, Washington, DC. "Top 20 law school" (U.S. NEWS & WORLD REPORT). International Law. Editorial Board, JOURNAL OF INTERNATIONAL LAW AND ECONOMICS (student law review). VA, CT Bar.

B.A., WESLEYAN UNIVERSITY, Middletown, CT. "Top 20 college" (U.S. NEWS). Government. English. Also: Exchange Student, MOUNT HOLYOKE COLLEGE, South Hadley, MA. "Top 20 college" (U.S. NEWS)